

AMENDMENTS TO THE DRAWINGS

A set of replacement figures is attached. FIGURE 1A replaces FIGURE 1 and includes a fan. New FIGURE 1B has been added. FIGURE 1B is an enlarged portion of FIGURE 1A and illustrates a plurality of orifices and a plurality of jets. FIGURE 2 is unchanged.

REMARKS

Applicant respectfully requests that the above-identified application be reexamined.

The April 16, 2007, Office Action in the above-identified application ("Office Action") objected to the drawings, rejected Claim 11 under 35 U.S.C. § 112, rejected Claims 8-16 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,990,290 (Gill et al.), and rejected Claims 2-7 and 10 under 35 U.S.C. § 103(a) as being unpatentable in view of the teachings of Gill et al.

The drawings were objected to on the grounds that certain claim features were not illustrated. Specifically, the Office Action indicated that fans propelling mist, means by which the intermittent misting can be performed, and a plurality of orifices and jets were not shown. The Office Action indicated that these features must be shown or canceled from the claims. In this regard, a new set of drawings is enclosed. FIGURE 1A replaces FIGURE 1 and includes a fan, element 55. Further, reference number 55 has been added to the specification where the fan is described. New FIGURE 1B has been added. FIGURE 1B is an enlarged portion of FIGURE 1A and illustrates a plurality of orifices and a plurality of jets, elements 33, 33', 33" and 36, 36', 36". Reference numbers 33', 33", 36', and 36" have been added to the specification. A pressurized air source 20 and an optional control timer 22 have been added. These items are shown and described in provisional application No. 60/405,633, whose priority date has been claimed and whose content has been incorporated by reference in this application. Reference numbers 20 and 22 have been added to the specification. Since the drawings have been amended to illustrate all claimed features, applicant respectfully submits that the objection to the drawings has been rendered moot and requests that it be withdrawn.

The 35 U.S.C. § 112 rejection objected to the recitation of "the coalesced droplets" in line 2 of Claim 11 on the basis there was insufficient antecedent basis for this limitation in Claim 11. In this regard, Claim 11, which depends from Claim 10, has been amended in a

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manner such that an antecedent basis exists for the language employed in Claim 11. As a result, applicant respectfully submits that the 35 U.S.C. § 112 rejection has also been rendered moot and requests that it be withdrawn.

Prior to discussing in detail why applicant believes that all of the claims in this application are allowable in view of the cited reference, namely, U.S. Patent No. 4,990,290 (Gill et al.), a brief description of the disclosed subject matter and a brief description of the reference are provided. The following discussion of the disclosed subject matter and the applied reference are not provided to define the scope or the interpretation of any of the claims of this application. Instead, these discussions are provided to help the United States Patent and Trademark Office better appreciate important claim distinctions discussed thereafter.

Disclosed Subject Matter

Disclosed is a method and machine for dispersing a **liquid bird repellent solution**. In one form, the method comprises: delivering a pressurized flow of air through a jet; sending a **liquid bird repellent solution** to an orifice; dispersing the **liquid bird repellent solution** in the pressurized flow of air; and filtering the droplets entrained in the flow of air to cause the removal of droplets in excess of 20 microns in diameter from the dispersed **liquid bird repellent solution**. The jet is spaced sufficiently apart from the orifice to allow the flow of air to entrain droplets of the **liquid bird repellent solution** into the flow of air from the jet.

In another form, the method comprises: providing a tank defining an interior space; placing a quantity of **bird repellent in liquid form** within the interior space of the tank; providing a nozzle assembly including at least one nozzle in fluid communication with the interior space of the tank, the at least one nozzle including a discharge aperture; providing an air pressurizing source; atomizing a portion of the **bird repellent** by moving air over the discharge aperture of the at least one nozzle via the air-pressurizing source, thereby providing an **atomized bird repellent**; and filtering the **atomized bird repellent** through a filter member.

In one form, the machine or apparatus for dispersing a **liquid bird repellent solution** comprises a housing and first and second conduits. The housing includes a **reservoir of liquid bird repellent solution**. The housing defines an airspace and also includes an exhaust port. The first conduit has an orifice and is configured to conduct the **liquid bird repellent solution** from the reservoir to the orifice. The orifice is located within the airspace of the housing. The second conduit has a jet. The second conduit is configured to conduct pressurized air to the jet. The jet is located within the housing and is spaced sufficiently apart from the orifice to allow the pressurized air to entrain the **liquid bird repellent solution** out of the orifice and **create a mist of the entrained liquid bird repellent solution**.

U.S. Patent No. 4,990,290 (Gill et al.)

Gill et al. is directed to a diffusion fogger suitable for use in entertainment industry theatrical performances, namely, the photographic, motion picture, video production, and other entertainment venues. While Gill et al. does disclose a method and apparatus that uses pressurized air to withdraw fluid (oil) from a sump or reservoir and emits the fluid entrained in air via a nozzle, here any relationship between Gill et al. and the present invention ends. **Gill et al. has nothing whatsoever to do with dispensing bird repellent solutions.** While Gill et al. does disclose generating a fog, the fog includes a nontoxic oil. See Col. 2, lines 1-10, of Gill et al. In contrast, bird repellents are intended to repel birds.

As discussed more fully below, applying the teachings of Gill et al. to the present claims is using prohibited hindsight reasoning since Gill et al. does not teach or suggest that the apparatus and method disclosed in Gill et al. could be used to deliver or disperse any type of repellent solution, much less a liquid bird repellent solution. Gill et al. is clearly non-analogous art.

Rejection of Claims 8-16 Under 35 U.S.C. § 102(b)

As noted above, Claims 8-16 were rejected under 35 U.S.C. § 102(b) in the Office Action based on the teachings of Gill et al. Applicant respectfully disagrees. As amended, Claim 8 reads as follows:

8. A machine for dispersing a **liquid bird repellent solution**, the machine comprising:

a housing including a **reservoir of liquid bird repellent solution**, the housing defining an airspace and also including an exhaust port;

a first conduit having an orifice, the first conduit being configured to conduct **the liquid bird repellent solution** from the reservoir to the orifice, the orifice being located within the airspace; and

a second conduit having a jet, the second conduit configured to conduct pressurized air to the jet, the jet located within the housing and being spaced sufficiently apart from the orifice to allow **the pressurized air to entrain the liquid bird repellent solution out of the orifice and create a mist of the entrained liquid bird repellent solution**. (Emphasis added.)

As noted above, Gill et al. is not directed to a machine for dispensing a liquid bird repellent solution. While Gill et al. does disclose a housing, including a reservoir, the reservoir does not include a liquid bird repellent solution. Regarding the recitations of "a first conduit having an orifice" and "a second conduit having a jet," while Gill et al. does disclose nozzles, exactly how the nozzles are constructed and how oil from the sump 23 is drawn and sprayed to create a fine oil mist 25 to form the Gill et al. fog is not described in detail. More importantly, Gill et al. does not teach or suggest a first conduit configured to conduct a **bird repellent solution** from a reservoir that **contains the bird repellent solution** to an orifice or a jet spaced sufficiently apart from an orifice to allow pressurized air to entrain a **liquid bird repellent solution** out of the orifice and create a mist of entrained **liquid repellent solution**. As a result, applicant respectfully submits that Claim 8 is clearly not rejectable under 35 U.S.C. § 102(b) as

being fully anticipated by Gill et al. Moreover, applicant submits that Claim 8 does not teach subject matter obvious in view of the teachings of Gill et al. Gill et al. has nothing whatsoever to do with machines for dispensing liquid bird repellent solutions. As a result, applicant respectfully submits that Claim 8 is clearly allowable.

Claims 9-15 all depend directly and indirectly from Claim 8 and, thus, are not anticipated by Gill et al. for the same reason that Claim 8 is not anticipated by Gill et al. Further, many of these claims are allowable for reasons in addition to the reasons why Claim 8 is allowable. For example, Claim 9, which depends from Claim 8, recites that the pressurized air is sufficient to **vaporize the liquid bird repellent solution**. Since Gill et al. does not disclose a liquid bird repellent solution, clearly, Gill et al. does not disclose vaporizing a liquid bird repellent solution. Claim 10, which depends from Claim 8, recites that **the exhaust port of the machine for dispensing bird repellent solution is configured to filter from the created mist droplets in excess of 20 microns in diameter**. This recitation is not even taught or remotely suggested by Gill et al. Claim 11 depends from Claim 10 and recites that the filter is additionally configured to direct the droplets in excess of 20 microns in diameter to the liquid reservoir. Again, this recitation is not taught or even remotely suggested by Gill et al. Claim 12, which depends from Claim 8, recites a fan configured to propel the created mist and Claim 14, which also depends from Claim 8, recites that the second conduit is configured to release a flow of air at predetermined intervals, neither of which are disclosed or suggested by Gill et al. As a result, applicant respectfully submits that the claims that depend from Claim 8 are allowable for reasons in addition to the reasons why Claim 8 is allowable.

New Claim 18 depends from Claim 8 and recites that the liquid bird repellent solution contains methyl anthranilate. This subject matter is clearly not taught or even remotely suggested by Gill et al. As a result, applicant submits that Claim 18 is also allowable for reasons in addition to the reasons why Claim 8 is allowable.

Claim 16 reads as follows:

16. A method for dispersing a **bird repellent**, comprising:

providing a tank defining an interior space;

placing a quantity of **bird repellent** in liquid form within the interior space of the tank;

providing a nozzle assembly including at least one nozzle in fluid communication with the interior space of the tank, the at least one nozzle including a discharge aperture;

providing an air pressurizing source;

atomizing a portion of the **bird repellent** by moving air over the discharge aperture of the at least one nozzle via the air pressurizing source, thereby providing an atomized **bird repellent**; and

filtering the atomized **bird repellent** through a filter member.
(Emphasis added.)

As noted above, Gill et al. clearly does not teach or describe a method of dispensing a bird repellent. Gill et al. clearly does not disclose placing a quantity of **bird repellent in liquid form** within the interior space of a tank. Nor does Gill et al. disclose atomizing a portion of a **bird repellent** by moving air over a discharge aperture. Gill et al. also does not disclose **filtering an atomized bird repellent through a filter member**. As a result, applicant respectfully submits that Claim 16 is not rejectable under 35 U.S.C. § 102(b) and is clearly allowable in view of the teachings of Gill et al.

New Claim 17 depends from Claim 16 and recites that **the bird repellent contains methyl anthranilate**. As noted above with respect to new Claim 18, this subject matter is clearly not taught or even remotely suggested by Gill et al. As a result, applicant respectfully submits that Claim 19 is allowable for reasons in addition to the reasons why Claim 16 is allowable.

In view of the foregoing amendments and comments, applicant respectfully submits that Claims 8-16 and new Claims 17 and 18 are clearly not rejectable under 35 U.S.C. § 102(b) based on the teachings of Gill et al. As a result, applicant respectfully submits that the claims are clearly allowable.

Rejection of Claims 2-7 Under 35 U.S.C. § 103(a)

As noted above, Claims 2-7 were rejected in the Office Action under 35 U.S.C. § 103(a) based on the teachings of Gill et al. The only independent claim of this group of claims, Claim 3 as amended reads as follows:

3. A method for dispersing a **liquid bird repellent solution**, the method comprising:

delivering a pressurized flow of air through a jet;

ending a **liquid bird repellent solution** to an orifice;

dispersing the **liquid bird repellent solution** in the pressurized flow of air; and

filtering the droplets entrained in the flow of air to cause the removal of droplets in excess of 20 microns in diameter from the dispersed liquid bird repellent solution,

wherein the jet is spaced sufficiently apart from the orifice to allow the flow of air to entrain droplets of the **liquid bird repellent solution** into the flow of air from the jet. (Emphasis added.)

As discussed above, Gill et al. does not teach or even remotely suggest a method of dispensing a bird repellent solution. As a result, Gill et al. does not disclose sending a bird repellent solution to an orifice or dispensing the bird repellent solution in a pressurized flow of air. Gill et al. also does not disclose filtering droplets entrained in a flow of air to cause the removal of droplets in excess of 20 microns in diameter from any type of solution, much less a dispersed liquid bird repellent solution. As a result, applicant respectfully submits that Claim 3 as well as all of the claims dependent therefrom (Claims 2 and 4-7) are clearly allowable.

Applicant further submits that many of these claims are allowable for reasons in addition to the reasons why Claim 3 is allowable. Since some of these additional reasons were discussed above, for purposes of brevity, they are not restated here.

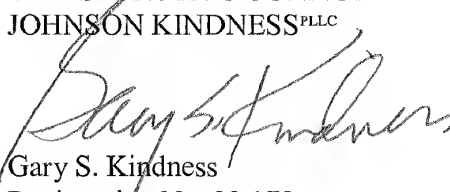
Applicant respectfully submits the rejection of Claims 2-7 under 35 U.S.C. § 103(a) is clearly based on prohibited hindsight reasoning. More specifically, the rejections use hindsight reasoning based on the teachings of the present application, not the teachings of the references, to reject the claims. This is clearly contrary to many decisions of the Court of the Appeals of the Federal Circuit (Fed. Cir.) and its predecessor court, the Court of Customs and Patent Appeals (C.C.P.A.), and the Board of Appeals. There is simply no teaching, suggestion, or motivation to use the Gill et al. method or apparatus to dispense a bird repellent solution.

CONCLUSION

In view of the foregoing amendments and remarks, applicant respectfully submits that the claims of this application are clearly allowable in view of the teachings of the cited and applied art. Applicant further submits that the objections to the drawings and the claims (under 35 U.S.C. § 112) have been rendered moot. As a result, applicant respectfully submits that this application is in condition for allowance. Consequently, early and favorable action allowing this application and passing it to issue is respectfully solicited.

Respectfully submitted,

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